



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,908	08/07/2003	Reinier Lh Bolhuis	2923-552	7844

6449 7590 08/25/2008
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER

DUFFY, BRADLEY

ART UNIT	PAPER NUMBER
----------	--------------

1643

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

08/25/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/635,908

Applicant(s)

BOLHUIS ET AL.

Examiner

BRADLEY DUFFY

Art Unit

1643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☒ Other: See Continuation Sheet.

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration is predicated upon entry of the entry and then meritorious consideration of the 1.132 declarations; and as the declarations have not been entered because a showing of good and sufficient reasons why the declarations were not presented earlier has not been made, Applicant's request is presently moot and has not been considered.

Continuation of 13. Other: Explanation of 8. In this case the 1.132 declarations filed August 4, 2008 will not be entered because it is submitted that Applicant has failed to provide a showing of good and sufficient reasons why the declarations were not earlier presented. Notably, the response filed August 4, 2008, indicates that the Declarations submitted in this Response and in previous responses attest to the fact that Dr. Sven Wamaar set bars for the distribution and usage of the G250 antibody prior to allocating the G250 antibody; so it is apparent that the instant declarations by others, who were also in possession of the hybridoma and antibody, could have been filed with the earlier declarations. This is because the issue of the availability of the hybridoma and antibody was already of record prior to the mailing of the final action mailed March 21, 2008. Therefore, it does not appear that the instant declarations were submitted in sole response to issues newly raised by the final office action. In addition, it is evident that the instant declaration by Dr. Gorter executed on April 5, 2007, could have been filed earlier before the final Office action mailed March 21, 2008. Contrary to Applicant's indication at page 4 of the response filed August 4, 2008, that the Gorter et al reference had not been cited until the most recent office action, the Gorter et al reference was first made of record in the Non-final Office action mailed June 20, 2006 at page 15. Thus, it appears that the declaration by Dr. Gorter of April 5, 2007, might have been prepared at a time following the mailing of this earlier Office action, and certainly could have been presented at earlier time during prosecution on the merits. Finally, it is noted that Applicant's remarks at page 3, for example, of the paper filed August 4, 2008, indicate that the instant declarations are intended to remedy the deficiencies of earlier filed declarations; as such, it is apparent that the declarations were not submitted in response to issues newly raised by the final Office action of March 21, 2008. Applicant has not otherwise provided a showing of good and sufficient reasons why the declarations under 1.312 by Dr. Gorter and Dr. Ritter were not filed earlier. Therefore, these declarations will not be entered for consideration of their merit at this time since they were not timely filed. It is suggested that Applicant file a RCE, such that the declarations may be considered.

/bd/

Examiner, Art Unit 1643